

Office of the Secretary of Defense

§ 310.4

SOURCE: 72 FR 18758, Apr. 13, 2007, unless otherwise noted.

Subpart A—DoD Policy

§ 310.1 Reissuance.

This part consolidates into a single location (32 CFR part 310) Department of Defense (DoD) policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a) by authorizing the development, publication and maintenance of the DoD Privacy Program set forth by DoD Directive 5400.11¹ and 5400.11-R,² both entitled: “DoD Privacy Program.”

§ 310.2 Purpose.

This part:

(a) Updates policies and responsibilities of the DoD Privacy Program under 5 U.S.C. 552a and OMB Circular A-130.

(b) Authorizes the Defense Privacy Board, the Defense Privacy Board Legal Committee, and the Defense Data Integrity Board.

(c) Continues to authorize the publication of DoD 5400.11-R.

(d) Continues to delegate authorities and responsibilities for the effective administration of the DoD Privacy Program.

§ 310.3 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereinafter referred to collectively as “the DoD Components”).

(b) Shall be made applicable to DoD contractors who are operating a system of records on behalf of a DoD Component, to include any of the activities, such as collecting and disseminating records, associated with maintaining a system of records.

(c) This part does not apply to:

(1) Requests for information made under the Freedom of Information Act. They are processed in accordance with DoD 5400.7-R.³

(2) Requests for information from systems of records controlled by the Office of Personnel Management (OPM), although maintained by a DoD Component. These are processed in accordance with policies established by OPM “Privacy Procedures for Personnel Records” (5 CFR 297).

(3) Requests for personal information from the General Accounting Office. These are processed in accordance with DoD Directive 7650.1.⁴

(4) Requests for personal information from Congress. These are processed in accordance with DoD Directive 5400.4 except those specific provisions in Subpart E—Disclosure of Personal Information to Other Agencies and Third Parties.

§ 310.4 Definitions.

(a) *Access*. The review of a record or a copy of a record or parts thereof in a system of records by any individual.

(b) *Agency*. For the purposes of disclosing records subject to the Privacy Act among the DoD Components, the Department of Defense is a considered a single agency. For all other purposes to include requests for access and amendment, denial of access or amendment, appeals from denials, and record keeping as relating to release of records to non-DoD Agencies, each DoD Component is considered an agency within the meaning of the Privacy Act.

(c) *Computer Matching Program*. The computerized comparison of two or more automated systems of records or a system of records with non-Federal records. Manual comparison of systems of records or a system of records with non-Federal records are not covered.

(d) *Confidential source*. A person or organization who has furnished information to the Federal Government under an express promise, if made on or after September 27, 1975, that the person’s or the organization’s identity shall be held in confidence or under an implied promise of such confidentiality if this

¹Copies may be obtained at <http://www.dtic.mil/whs/directives>.

²See footnote 1 to § 310.1.

³See footnote 1 to § 310.3(c)(1).

⁴See footnote 1 to § 310.3(c)(1).

implied promise was made on or before September 26, 1975.

(e) *Disclosure.* The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or Government Agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

(f) *Federal benefit program.* A program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals.

(g) *Federal personnel.* Officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the United States (including survivor benefits).

(h) *Individual.* A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Members of the United States Armed Forces are "individuals." Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not "individuals" when acting in an entrepreneurial capacity with the Department of Defense but are "individuals" otherwise (e.g., security clearances, entitlement to DoD privileges or benefits, etc.).

(i) *Individual access.* Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

(j) *Lost, stolen, or compromised information.* Actual or possible loss of control, unauthorized disclosure, or unauthorized access of personal information where persons other than authorized users gain access or potential access to such information for an other than authorized purpose where one or more individuals will be adversely affected.

Such incidents also are known as *breaches*.

(k) *Maintain.* To maintain, collect, use, or disseminate records contained in a system of records.

(l) *Non-Federal agency.* Any state or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a computer matching program.

(m) *Official use.* Within the context of this part, this term is used when officials and employees of a DoD Component have a demonstrated a need for the record or the information contained therein in the performance of their official duties, subject to DoD 5200.1–R.⁵

(n) *Personal information.* Information about an individual that identifies, links, relates, or is unique to, or describes him or her, e.g., a social security number; age; military rank; civilian grade; marital status; race; salary; home/office phone numbers; other demographic, biometric, personnel, medical, and financial information, etc. Such information also is known as *personally identifiable information* (i.e., information which can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, including any other personal information which is linked or linkable to a specified individual).

(o) *Privacy Act request.* A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

(p) *Member of the public.* Any individual or party acting in a private capacity to include Federal employees or military personnel.

(q) *Recipient agency.* Any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a computer matching program.

(r) *Record.* Any item, collection, or grouping of information, whatever the storage media (e.g., paper, electronic,

⁵ See footnote 1 to § 310.1.

etc.), about an individual that is maintained by a DoD Component, including, but not limited to, his or her education, financial transactions, medical history, criminal or employment history, and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(s) *Risk assessment.* An analysis considering information sensitivity, vulnerabilities, and cost in safeguarding personal information processed or stored in the facility or activity.

(t) *Routine use.* The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

(u) *Source agency.* Any agency which discloses records contained in a system of records to be used in a computer matching program, or any state or local government, or agency thereof, which discloses records to be used in a computer matching program.

(v) *Statistical record.* A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

(w) *System of records.* A group of records under the control of a DoD Component from which personal information about an individual is retrieved by the name of the individual or by some other identifying number, symbol, or other identifying particular assigned, that is unique to the individual.

§ 310.5 Policy.

It is DoD policy that:

(a) The privacy of an individual is a personal and fundamental right that shall be respected and protected.

(1) The Department's need to collect, maintain, use, or disseminate personal information about individuals for purposes of discharging its statutory responsibilities shall be balanced against the right of the individual to be protected against unwarranted invasions of their privacy.

(2) The legal rights of individuals, as guaranteed by Federal law, regulation, and policy, shall be protected when collecting, maintaining, using, or disseminating personal information about individuals.

(3) DoD personnel, to include contractors, have an affirmative responsibility to protect an individual's privacy when collecting, maintaining, using, or disseminating personal information about an individual.

(4) Departmental legislative, regulatory, or other policy proposals shall be evaluated to ensure that privacy implications, including those relating to the collection, maintenance, use, or dissemination of personal information, are assessed, to include, when required and consistent with the Privacy Provision of the E-Government Act of 2002 (44 U.S.C. 3501, Note), the preparation of a Privacy Impact Assessment.

(b) Personal information shall be collected, maintained, used, or disclosed to ensure that:

(1) It shall be relevant and necessary to accomplish a lawful DoD purpose required to be accomplished by statute or Executive order.

(2) It shall be collected to the greatest extent practicable directly from the individual.

(3) The individual shall be informed as to why the information is being collected, the authority for collection, what uses will be made of it, whether disclosure is mandatory or voluntary, and the consequences of not providing that information.

(4) It shall be relevant, timely, complete, and accurate for its intended use; and

(5) Appropriate administrative, technical, and physical safeguards shall be established, based on the media (e.g., paper, electronic, etc.) involved, to ensure the security of the records and to prevent compromise or misuse during storage, transfer, or use, including working at authorized alternative worksites.

(c) No record shall be maintained on how an individual exercises rights guaranteed by the First Amendment to the Constitution, except as follows:

(1) When specifically authorized by statute;